

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DePuy Mitek, Inc.)	
a Massachusetts Corporation)	
)	
Plaintiff,)	
)	
v.)	Civil No. 04-12457 PBS
)	
Arthrex, Inc.)	
a Delaware Corporation and)	
)	
Pearsalls Ltd.)	
a Private Limited Company)	
of the United Kingdom)	
)	
Defendants.)	

DePuy Mitek's Motion to Strike Dr. Mukherjee's Declarations and Exhibits

On reply to its *Markman* and Summary Judgment motions, Arthrex and Pearsalls submitted new opinions from Dr. Mukherjee that are based on new documents that were not produced or considered during fact or expert discovery. That violates all notions of fairness. Accordingly, Mitek moves to strike:

1. Dr. Mukherjee's Declaration ¶¶3-8, 12 and 13 and Declaration Exhibits B-E submitted with Arthrex's Replies to its Summary Judgment/*Markman* motions;
2. All references to Dr. Mukherjee's Declaration ¶¶3-8, 12 and 13 and Declaration Exhibits B-E submitted with Arthrex's Replies to its Summary Judgment/*Markman* motions; and
3. Dr. Mukherjee's Declaration submitted with its Opposition to Mitek's Motion to Strike Hearsay Exhibit and All Citation and Commentary Thereto.

Dated: September 22, 2006

DEPUY MITEK, INC.,
By its attorneys,

/s/ Erich M. Falke

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